

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 787 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

HARJIBHAI MAGANLAL

Versus

RASIKLAL HIMMATLAL PANDYA

Appearance:

MR PM THAKKAR for Petitioner
PARTY-IN-PERSON for Respondent

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 25/08/2000

ORAL JUDGEMENT

1. This is a revision application u/s 29[2] of the Bombay Rent Act at the instance of the original defendant - tenant, who was sued by the respondent - plaintiff landlord for a decree of eviction. The landlord filed the suit for eviction of the defendant - tenant on the

ground that the defendant had unlawfully sublet the suit premises, and was therefore liable to be evicted u/s 13[1][e] of the Bombay Rent Act. Another ground pressed into service by the landlord was that the tenant had acquired other suitable residential accommodation within the meaning of section 13[1][1] of the Rent Act.

2. The trial Court raised appropriate issues on the pleadings of the parties, and on a total consideration of the evidentiary material on record, found against the plaintiff - landlord on both the grounds urged, and therefore, dismissed the suit of the landlord.

2.1 The landlord thereupon preferred an appeal before the lower appellate Court u/s 29[1] of the Bombay Rent Act. The lower appellate Court, on a total re-appraisal of the evidence on record, reversed the findings of the trial Court on both these material grounds, and found that the tenant was guilty of unlawful subletting within the meaning of section 13[1][e] of the Rent Act, and also found that the tenant had acquired other suitable residential accommodation within the meaning of section 13[1][1] of the Rent Act, and therefore, decreed the suit of the landlord on both the grounds.

2.2 It is under such circumstances that the defendant - tenant has challenged the judgement and decree of the lower appellate Court by way of the present revision.

3. Before proceeding with the merits of the matter, it would be pertinent to bear in mind the principles laid down by the Supreme Court while dealing with the revisions arising u/s 29[2] of the said Act. The Supreme Court in the case of Patel Valmik Himatlal & Ors. v/s Patel Mohanlal Muljibhai [1998(2) GLH 736] = AIR 1988 SC 3325, while approving and reiterating the principles laid down in its earlier decision in the case of Helper Girdharbhai v/s Saiyad Mohmad Mirasaheb Kadri [AIR 1987 SC 1782], held that High Court cannot function as a court of appeal, cannot reappreciate the evidence on record, cannot discard concurrent findings of fact based on evidence recorded by the courts below, and cannot interfere on grounds of inadequacy or insufficiency of evidence, and cannot interfere, except in cases where conclusions drawn by the courts below are on the basis of no evidence at all, or are perverse. A different interpretation on facts is also not possible merely because another view on the same set of facts may just be possible.

4. As a result of the hearing and discussion, and on

a perusal of the evidentiary material on record, it is found that the following facts are undisputed and/or undisputable :-

[i] The defendant - Harjibhai is the tenant of the suit premises.

[ii] There is no evidentiary material on record to establish that the defendant - tenant had taken the suit premises on lease for the benefit of the joint family consisting of the defendant, his brother Mansing and his mother.

[iii] The defendant left the suit premises and went to live in another residential premises (near the suit premises) where he resided for about 4.1/2 years, and thereafter, went to live in another premises in Bhaktinagar known as "Ram Nivas".

[iv] The defendant's brother Mansing continued to reside in the suit premises even after the defendant - tenant had left the same, and after Mansing got married, he acquired another premises and went to live there with his family.

[v] As soon as Mansing left the suit premises, on the same day, the defendant re-entered into the suit premises.

5. These facts are so eloquently established by the evidence on record, and the learned counsel for the petitioner - tenant has not even attempted to urge that the said findings of fact require to be disturbed, even on the ground that the same are perverse.

6. It is thus found and more or less an admitted position, that at a certain point of time, the defendant voluntarily left the suit premises and went to live in other premises where he resided with his own family for 4.1/2 years. It is also an admitted position that thereafter, the defendant left those premises and went to live in yet another premises located in Bhaktinagar, known as "Ramesh Nivas", where he resided with his family. It was only when the defendant's brother vacated the suit premises, that the defendant re-occupied the suit premises.

7. On these facts which are established on record, there cannot be any controversy that the defendant had acquired other suitable residential premises.

7.1 The fact that other residences where the defendant had resided for many years were residential premises, is not in dispute, because the defendant was occupying the suit premises for purpose of residence, and occupied those other residences alongwith his family. It must also be noted that there is no specific contention raised by the tenant that such other residences were not suitable for use as residence. In fact, it is a matter of common sense that if such other residences were not suitable for use as residence, the defendant would not in the first place have left the suit premises at all, and would not have left the first alternate accommodation in order to shift to his second alternate accommodation namely "Ram Nivas".

7.2 The lower appellate Court has rightly observed that the fact that the defendant was in occupation of the suit premises on the date of the suit is irrelevant. The lower appellate Court has rightly focused on the relevant considerations namely, that on the date of the suit notice, the defendant had left the suit premises, and was occupying other residence which was suitable for his purpose.

7.3 Even if the oral contention on behalf of the defendant (dehors the pleadings or evidence) is considered, to the effect that the premises in "Ram Nivas" which the defendant occupied was not suitable for residence, such oral contention does not assist the case of the defendant any further. As already discussed hereinabove, the defendant, in the normal course of events, would not have left the rented premises and shifted to the first alternate accommodation, and would not have left the first alternate accommodation in favour of "Ram Nivas", unless each of the changes provided residential accommodation more suitable as residence than the previous one. It requires to be noted that there is no iota of evidence led by the defendant - tenant to indicate that such changes of residences were on account of any pressing contingency or compelling circumstance.

8. Thus, on this evidentiary material on record, I am bound to confirm the finding of the lower appellate Court that the landlord had succeeded in establishing that the tenant had acquired other suitable residential accommodation, and was therefore entitled to a decree for possession u/s 13[1][1] of the Rent Act.

9. Learned counsel for the petitioner - tenant also challenged the finding recorded by the lower appellate Court on the ground of unlawful subletting. In this

context, it was urged that merely because the original tenant had transferred the possession to his brother Mansing, it does not establish "unlawful subletting" within the meaning of section 13[1][e] of the Bombay Rent Act.

9.1 This contention requires to be appreciated from two separate aspects. It must be appreciated that both Harjibhai, the original tenant and Mansing, the brother, were not merely brothers, but were also living together with their mother, as two sons under the same roof. They were therefore a family unit. When it is alleged by the landlord that the tenant Harjibhai had created an unlawful sub-tenancy in favour of Mansing, it is implicit in this allegation that Harjibhai was the sole tenant. In this context, the question would arise as to whether, when an elder brother moves out of the suit premises leaving the suit premises with the family member, is it merely an arrangement which meets the requirements of the then prevalent situation, or does it necessarily amount to a transfer of the tenant's interest in the property. It must be remembered that section 13[1][1] requires, in order to create an unlawful sub-tenancy, not merely the transfer of exclusive possession, but also that such transfer of exclusive possession must be accompanied by valuable consideration.

9.2 On the facts of the case, it is seen that although the defendant had moved out of the suit premises for some time leaving his brother Mansing in occupation thereof, it is equally obvious from the evidence that as soon as Mansing moved out of the suit premises, Harjibhai re-entered the same. This mutual exchange of occupation of the premises goes against the presumption sought to be created that Harjibhai had left the suit premises in the exclusive possession of Mansing in the capacity of his own tenant.

9.3 There is further the question of whether such transfer of exclusive possession was for a valuable consideration. It is an admitted fact that there is no evidence, let alone direct evidence that Mansing was making any payment whatsoever to the tenant Harjibhai for the use and occupation of the suit premises. Furthermore, there cannot be any presumption that a younger brother would be required to pay any valuable consideration to his elder brother for the use and occupation of that property which was for many years used by all of them for common residence.

9.4 The case law on this is also equally clear. This

Court in the case of Dahiben Lakhabhai and another v/s Administrative officer & others [21 GLR 90] has held that, in order to prove an act of unlawful subletting within the meaning of section 13[1][e] of the Bombay Rent Act, it must be proved that the transfer of exclusive possession was for valuable consideration. If it is not established that such transfer was for valuable consideration, section 13[1][e] of the Rent Act would have no application.

9.5 For this reason, I am unable to sustain the finding of the lower appellate Court in favour of the landlord u/s 13[1][e] of the Rent Act, which is hereby quashed and set aside.

10. However, in view of my first finding upholding the finding of the lower appellate Court on the aspect of the tenant having acquired other suitable residential accommodation, the decree of eviction passed u/s 13[1][1] of the Bombay Rent Act is required to be upheld.

11. In the premises aforesaid, this revision application succeeds only in part to the aforesaid extent, while upholding the decree passed by the lower appellate Court. This revision is accordingly disposed of, and Rule is discharged with no orders as to costs.

12. At this stage, learned counsel for the petitioner - tenant seeks some time to vacate the premises. In consultation with the respondent - party-in-person (the landlord), and on the facts and circumstances of the case, time is granted to the petitioner - tenant to vacate the suit premises upto 20th November 2000, subject to the usual undertaking being filed in this Court, latest by 8th of September 2000. It is clarified that if the said undertaking is not filed by due date, the decree shall become executable forthwith. It is further clarified that there shall be no extension of time whatsoever for the purpose of filing the undertaking.

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